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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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Peter J. Macer

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HEWLETT PACKARD COMPANY
P O BOX 272400, 3404 E. HARMONY ROAD
INTELLECTUAL PROPERTY ADMINISTRATION
FORT COLLINS, CO 80527-2400

EXAMINER

SWearingen, Jeffrey R

ART UNIT

PAPER NUMBER

2145

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/894,917

Applicant(s)

MACER ET AL.

Examiner

Jeffrey R. Swearingen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 April 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 42-99 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 42-99 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to claims 42-99 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary.

Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

4. Claims 42-63, 65, 67-86, 88-90, 92, and 94-99 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins et al. (US 6,009,458 in view of Chang (US 6,757,517 B2).

5. In regard to claim 42, Hawkins taught a networked computer gaming system that swapped game objects. (Hawkins, column 16, lines 28-32) Hawkins operated over a wireless network. (Hawkins, column 5, lines 31-37) Hawkins was a peer-to-peer network connection. (Hawkins, column 5, lines 57-58) Hawkins failed to expressly disclose the short-range wireless apparatus used in the transmission and swapping of digital objects.

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6. Chang disclosed an apparatus used in wireless ad-hoc networks. (Chang, column 3, lines 14-25) Chang was used to “swap” the musical profiles (digital objects) of listeners. (Chang, column 3, lines 45-49) Chang operated with a short-range radio transmission. (Chang, column 3, lines 23-32)

7. Hawkins and Chang were both used for the transmission and exchange of digital objects for entertainment purposes, and thus were analogous art. The description of Chang fit an implementation in the background of Chang. (Chang, column 3, lines 35-38). Because Chang was an apparatus used for transmission of data between two such apparatus via wireless technology, and because users of a wireless network as taught in Hawkins would need greater mobility, it would have been obvious to one of ordinary skill in the art to use the apparatus and teachings of Chang to modify the teachings and method of Hawkins.

8. In regard to claim 43, Hawkins in view of Chang further disclosed *displaying a list of the game objects held in the store and displaying a more detailed representation of a digital game object when that object s selected by a user from a list*. Hawkins, column 18, lines 30-47, Trade Room. Hawkins, Figures 3-A-4B. Chang, column 3, lines 45-49.

9. In regard to claim 44, Hawkins in view of Chang further disclosed *providing to the user information on game objects that become available to be acquired from a similar machine that comes within range of the machine, to enable the user to take a decision on whether or not to proceed with a swapping transaction*. Hawkins, column 18, lines 30-47, Trade Room. Chang, column 3, lines 45-49.

10. In regard to claim 45, Hawkins in view of Chang further disclosed *being provided by the user with a standing instruction to swap a certain game object or category of game objects in the game object store for another specified game object or category of game objects if such a required object or object category becomes available for swap, and any conditions imposed on the swap by the user are complied with*. Hawkins, column 16, line 50 – column 17, line 21, marketplace description.

11. In regard to claim 46, Hawkins in view of Chang further disclosed *allocating a retained object portion of the digital object store for storing objects for which the machine user has taken a decision to retain, or for objects for which the user has not yet taken a decision on whether to retain or swap, and to allocate a selected article window portion of the game store in which game objects can be placed for*

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which the user has taken at least a preliminary decision to dispose of provided that a swap deal can be arranged. Hawkins, column 18, lines 30-47, Trade Room menu. Chang, column 3, lines 45-49.

12. In regard to claim 47, Hawkins in view of Chang further disclosed *when the user's machine is within range of another similar machine information is transmitted to the other machine to inform the other machine of the content of the selected article window store.* Chang, column 3, line 58 – column 4, line 49.

13. In regard to claim 49, Hawkins in view of Chang further disclosed *issuing an alert to the use upon the availability of a potential swap.* Hawkins, column 18, lines 30-47, Trade Room. Chang, column 3, lines 45-47.

14. In regard to claim 50, Hawkins in view of Chang further disclosed *causing a display of the machine to comprise a reciprocal display portion adapted to display the content of the selected article window store of another machine which is within range.* Hawkins, column 18, lines 30-7, Trade Room. Chang, column 3, line 58 - column 4, line 49.

15. In regard to claim 51, Hawkins in view of Chang further disclosed *causing the machine to transmit a game object for sampling over a limited length of time to facilitate a decision being made as to whether the game object is to be acquired by proceeding with a swap transaction.* Hawkins, column 16, lines 50-59.

16. In regard to claim 52, Hawkins in view of Chang further disclosed *the game object includes a game program, the program comprising code for configuring the machine whereby the current owner of the game can allow the user of another similar machine within range to sample playing of the game by exercising game control over the wireless connection, the game being run on the machine of the current game owner.* Hawkins, column 17, demonstration version of a game.

17. In regard to claim 53, Hawkins in view of Chang further disclosed *configuring the manually operable control to enable the user of the machine to select which game objects are transferred from the retention portion of the store to the selected article window portion of the store and vice-versa.* Hawkins, column 18, lines 30-47, Trade Room. Chang, column 3, line 49, button or switch.

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18. In regard to claim 54, Hawkins in view of Chang further disclosed *configuring the machine to provide a swap proposal indicator for indicating to another, similar machine the swap transaction being proposed*. Hawkins, column 18, lines 30-47, Trade Room menu. Chang, column 3, lines 45-49.

19. In regard to claim 55, Hawkins further disclosed *the swap proposal indicator comprises a linking indicator function adapted to link the representations of the digital game objects held by the two machines in their selected article window stores, and to communicate that link indicator to the other machine*. Per column 18, lines 30-47, a Trade Room menu existed to facilitate object trading.

20. In regard to claim 56, Hawkins further disclosed *providing a swap approval indicator which is arranged to respond to transmit a response to the other machine in answer to the output of the linking indicator function of the machine which first suggests a swap proposal*. Per column 18, lines 30-47, a Trade Room menu existed to facilitate object trading.

21. In regard to claim 57, Hawkins further disclosed *providing a swap control function arranged to be initiated on acceptance of a proposed swap by a similar such machine*. Per column 18, lines 30-47, a Trade Room menu existed to facilitate object trading.

22. In regard to claim 58, Hawkins further disclosed *providing a swap protocol that ensures that the data objects that have been agreed to be swapped are transmitted simultaneously by the two machines*. See Hawkins, column 17, lines 4-15.

23. In regard to claim 59, Hawkins further disclosed *configuring the machine for enabling data objects to be loaded into the machine by purchasing transaction from a data object vendor rather than by a data object swapping transaction*. A purchasing marketplace embodiment was provided for in column 16, lines 28-33.

24. Claim 60 has substantially the same limitations as claim 42.

25. In regard to claim 61, Hawkins further disclosed *a visual display*. See Hawkins, column 15, lines 13-16.

26. In regard to claim 62, the trading feature in columns 16-17 made the ability to *display the entire contents of the digital object store* inherent to Hawkins.

27. Claim 63 has substantially the same limitations as claim 43.

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28. In regard to claim 65, the presence of a *hand responsive device* was inherent to Hawkins.
29. Claim 67 has substantially the same limitations as claim 44.
30. Claim 68 has substantially the same limitations as claim 45.
31. In regard to claim 69, Hawkins further disclosed *standing instructions include conditions imposed on the swap by the user, the program storing steps for causing the processor, transceiver and digital store to execute the standing instructions only in response to the condition being satisfied*. See Hawkins, column 17, lines 4-15.
32. Claim 70 has substantially the same limitations as claim 46.
33. Claim 71 has substantially the same limitations as claim 47.
34. Claim 72 has substantially the same limitations as claim 48.
35. Claim 73 has substantially the same limitations as claim 49.
36. Claim 74 has substantially the same limitations as claim 50.
37. Claim 75 has substantially the same limitations as claim 51.
38. Claim 76 has substantially the same limitations as claim 52.
39. Claim 77 has substantially the same limitations as claim 53.
40. Claim 78 has substantially the same limitations as claim 54.
41. Claim 79 has substantially the same limitations as claim 55.
42. Claim 80 has substantially the same limitations as claim 56.
43. Claim 81 has substantially the same limitations as claim 57.
44. Claim 82 has substantially the same limitations as claim 58.
45. Claim 83 has substantially the same limitations as claim 59.
46. In regard to claims 84-85, Hawkins further disclosed *the game object input comprises a reader adapted to read a physical storage medium, the program storing steps for causing the reader to load purchased game objects into the machine store, wherein the program includes steps for disabling the storage medium following reading of the medium*. See Hawkins, column 15, lines 8-11.
47. Claim 86 has substantially the same limitations as claim 83.
48. Claim 88 has substantially the same limitations as claim 52.

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49. In regard to claim 89, the additional limitations of claim 89 are covered in column 17, lines 44-65 and column 18, line 55 – column 19, line 25 of Hawkins.

50. In regard to claim 90, Hawkins further disclosed *a game feature for assisting a player to play a game*. See the communications chat function of column 19, lines 1-25.

51. In regard to claim 92, Hawkins further disclosed *the digital game object includes an enhancement to the functionality of the machine*. All of the objects in Hawkins were used for gaming, which was an *enhancement to the functionality of the machine*.

52. Claim 94 has substantially the same limitations as claim 60.

53. In regard to claim 95, Hawkins further disclosed *the store stores information enabling the game objects to be stored in the form of a decorative virtual card or token, the program steps for controlling the store, processor and display including steps for causing the display to display the game object in the form of the decorative virtual card or token*. See Hawkins, column 7, lines 18-33.

54. In regard to claim 96, Hawkins further disclosed *the store stores information enabling the game objects to be stored in the form of a moving image, the program steps for controlling the store, processor and display including steps for causing the display to display the game object in the form of the moving image*. See Hawkins, column 7, lines 18-33.

55. In regard to claim 97, Hawkins further disclosed *the store stores information enabling the game objects to be stored in the form of a moving image and associated textual information, the program steps for controlling the store, processor and display including steps for causing the display to display the game object in the form of the moving image and associated textual information*. See Hawkins, column 7, lines 18-33.

56. In regard to claim 98, Hawkins further disclosed *the store stores information enabling the game objects to be stored in the form of a moving image and associated audio information, the program steps for controlling the store, processor, and display including steps for causing the display game to display the game object in the form of the moving image and associated audio information*. See Hawkins, column 7, lines 18-33.

57. Claim 99 has substantially the same limitations as claims 42-59.

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58. Claims 64 and 66 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of Chang in further view of Official Notice.

59. In regard to claim 64, Hawkins in view of Chang failed to disclose voice activation technology, but voice activation technology was well known in the art at the time of the invention and applied in many computing situations to assist visually impaired persons. Therefore it would have been obvious at the time of the invention to upgrade the Hawkins/Chang invention with voice activation technology to help the visually impaired fully use the invention.

60. In regard to claim 66, Hawkins in view of Chang failed to disclose that the size of the equipment was *such that the housing can be put in a clothes pocket of the user*. However, miniaturization was commonly used in electronic equipment at the time of the invention by one of ordinary skill in the art to allow for greater portability of an electronic device. Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to implement the Hawkins/Chang device in any size architecture, including a pocket sized device.

61. Claims 87, 91 and 93 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hawkins in view of Chang, and further in view of Hawkins et al. (U.S. Patent No. 6,516,202, hereafter referred to as VisorPhone).

62. In regard to claims 87 and 91, Hawkins disclosed a network system that used wireless technology (column 5, lines 30-37) with a computing device not limited to a computer with a display (column 5, lines 55-64) such as a PDA. Hawkins in view of Chang failed to disclose the ability to incorporate cellular phone technology into the system. However, Visorphone disclosed an expansion system for a personal organizer or computing device with a display that expanded the device to include the functionality of a cellular telephone. See Visorphone, Abstract. In order to allow ease of connection to a wireless network anywhere including a cellular network, it would have been obvious to one of ordinary skill in the art to use the expansion capabilities of Visorphone with the Hawkins/Chang device.

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63. In regard to claim 93, it would have been further obvious to one of ordinary skill in the art to use downloadable ring tones with a cellular telephone to allow customization of the phone system.

Conclusion

64. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

65. Reed et al. US 6,275,707 B1

66. Hill et al. US 6,470,189 B1

67. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

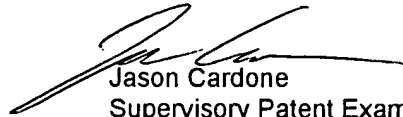
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Jason Cardone
Supervisory Patent Examiner
Art Unit 2145